

2012 WL 5869770 (Minn.Dist.Ct.) (Trial Pleading)

District Court of Minnesota,  
Civil Division, Third Judicial District.  
Olmsted County

Irene M. O'NEIL, Plaintiff,

v.

Kevin J. O'NEIL, Defendant.

No. 55-CV-11-5776.  
October 4, 2012.

**Hird Amended Complaint**

O'Brien & Wolf, L.L.P., [Raymond L. Hansen](#), #0281785, Attorney for Plaintiff, 206 South Broadway, Suite 611, P. O. Box 968, Rochester, MN 55903-0968, (507) 289-4041.

The Plaintiff states and alleges as follows for her cause of action against the above-named Defendant:

**I.**

Mark J. Peterson has been appointed, and is acting as Conservator and Guardian for Irene M. O'Neil, pursuant to Olmsted County District Court Order dated June 28, 2011 in the Olmsted County District Court Probate Division Court File #55-PR-11-4316.

**II.**

Plaintiff, Irene M. O'Neil currently, and at all time relevant to this case, resides in Olmsted County, Minnesota.

**III.**

Defendant, Kevin J. O'Neil, currently, and at all times relevant to this case, resides in Olmsted County, Minnesota.

**IV.**

On February 14, 2006, Irene M. O'Neil and Kevin J. O'Neil signed a Purchase Agreement in which Irene M. O'Neil agreed to sell, and Kevin J. O'Neil agreed to buy, 40 acres of land in Olmsted County, Minnesota (hereinafter referred to as the "Purchase Agreement"). A copy of the Purchase Agreement is attached hereto as Exhibit 1.

**V.**

On information and belief, the 40-acre parcel of land which is the subject of the Purchase Agreement is the NE 1/4 of the SE 1/4, in Section 25, Township 106, Range 14, Olmsted County, Minnesota, and commonly known as 1900 45<sup>th</sup> Street Southeast, Rochester, Olmsted County, Minnesota (hereinafter referred to as the "1900 Property").

**VI.**

At some time after the Purchase Agreement was typed, the purchase price in paragraph 2.1 of the Purchase Agreement was changed by handwritten marking.

**VII.**

In early 2006, Irene M. O'Neil and Kevin J. O'Neil discussed that if Irene M. O'Neil sold the 1900 Property to Kevin J. O'Neil, that Kevin J. O'Neil and his wife would put some form of dwelling on the 1900 Property to live in, and Irene M. O'Neil would retain a Life Estate in the 1900 Property.

**VIII.**

Irene M. O'Neil did not deposit any payment from Kevin J. O'Neil for the 1900 Property.

**IX.**

Kevin J. O'Neil convinced Irene M. O'Neil to endorse and return the Purchase Agreement proceeds check back to him.

**X.**

Irene M. O'Neil did not intend the transfer of the 1900 Property to Kevin J. O'Neil to be a gift.

**XI.**

On February 17, 2006, Irene M. O'Neil signed a Warranty Deed to Kevin J. O'Neil, pursuant to Statutory Warranty Deed requirements and it was recorded in the Olmsted County Recorder of Deeds records as document #A-1093304 on March 3, 2006 (hereinafter referred to as "Warranty Deed"). A copy of the Warranty Deed is attached hereto as Exhibit 2

**XII.**

The Warranty Deed did not reserve a Life Estate to Irene M. O'Neil as intended by Irene M. O'Neil and Kevin J. O'Neil.

**XIII.**

Irene M. O'Neil stated that she would not have sold Kevin J. O'Neil the 1900 Property if she knew he did not have the money.

**XIV.**

Irene M. O'Neil wrote a check to Kevin J. O'Neil on August 27, 2010 for \$3,000.00. A copy of the face of the check is attached hereto as Exhibit 3.

**XV.**

Irene M. O'Neil wrote a check to Kevin J. O'Neil on December 1, 2009, for \$7,000.00. A copy of the face of the check is attached hereto as Exhibit 4.

**XVI.**

Irene M. O'Neil withdrew \$10,000.00 cash on January 1, 2011, which she gave to Kevin J. O'Neil. A copy of the withdrawal receipt is attached hereto as Exhibit 5.

***Count I-Lack of Consideration.***

**XVII.**

Plaintiff, Irene M. O'Neil, restates and re-alleges all of the proceeding paragraphs as though fully set forth in this Count.

**XVIII.**

Irene M. O'Neil received no exchange of value for conveying title to the 1900 Property to Kevin J. O'Neil.

WHEREFORE, the Plaintiff, Irene M. O'Neil demands:

1. Rescission and restitution of the Purchase Agreement.
2. For such other and further relief as the Court deems just and equitable.

***Count II-Unilateral Mistake***

**XXIV.**

This Count II is plead in the alternative to Count I of this Complaint.

Plaintiff, Irene M. O'Neil, restates and re-alleges all of the preceding paragraphs as though fully set forth herein.

**XXV.**

Irene M. O'Neil made a mistake about what she would receive in exchange for transferring the 1900 Property to Kevin J. O'Neil because of an ambiguity, fraud, or misrepresentation created by Kevin J. O'Neil.

**XXVI.**

Irene M. O'Neil's mistake was caused by Kevin J. O'Neil engaging in wrongful conduct that brought about the mistake.

WHEREFORE, the Plaintiff, Irene M. O'Neil, demands:

1. Rescission and restitution of the Purchase Agreement.
2. For such other and further relief as the Court deems just and equitable.

***Count III-Unjust Enrichment/Quantum Meruit.***

This Count III is plead in the alternative to Counts I and II of this Amended Complaint.

**XXVII.**

Plaintiff, Irene M. O'Neil, restates and re-alleges all of the proceeding paragraphs as though fully set forth in this Count.

**XXVIII.**

Kevin J. O'Neil was unjustly enriched by obtaining the 1900 Property for limited or no consideration when Irene M. O'Neil never contemplated gifting the 1900 Property to Kevin J. O'Neil.

WHEREFORE, Irene M. O'Neil demands:

1. That under the Doctrine of Quantum Meruit, Kevin J. O'Neil be ordered to pay Irene M. O'Neil the. reasonable value of the 1900 Property on the day that she conveyed title to him.
2. For such other and further relief as the Court deems just and equitable.

***Count IV-Breach of Contract***

**XXIX.**

This Count IV is plead in the alternative to Counts I through III of this Complaint.

**XXX.**

Plaintiff, Irene M. O'Neil, restates and re-alleges all of the proceeding paragraphs as though fully set forth in this Count.

**XXXI.**

That Irene M. O'Neil did not receive the value for which she bargained when she sold the 1900 Property to Kevin J. O'Neil.

**XXXII.**

Kevin J. O'Neil failed to perform his obligations under the Purchase Agreement.

**XXXIII.**

Irene M. O'Neil has performed, or stands ready, willing and able to perform, pursuant to the terms of the Purchase Agreement.

WHEREFORE, Irene M. O'Neil demands:

1. Rescission and restitution of the Purchase Agreement.

2. In the alternative, that Plaintiff, Irene M. O'Neil, be awarded damages in an amount that will place her in the same situation as if Kevin J. O'Neil had performed his obligations under that contract.
3. For such other and further relief as the Court deems just and equitable.

***Count V - Conversion***

**XXXIV.**

Plaintiff, Irene M. O'Neil, restates and realleges all of the preceding paragraphs as though fully set forth in this Count.

**XXXV.**

Kevin J. O'Neil willfully interfered with Plaintiff Irene M. O'Neil's right to funds and property he took from her without lawful justification depriving Irene M. O'Neil of her funds and property.

**XXXVI.**

Irene M. O'Neil was the rightful possessor of the funds and personal property that Defendant Kevin J. O'Neil took from her.

WHEREFORE, Plaintiff Irene M. O'Neil prays for judgment against Defendant Kevin J. O'Neil for:

1. Damages in excess of Fifty Thousand and 00/100 (\$50,000.00) Dollars;
2. Costs and disbursements; and
3. Such further relief as the Court finds just and equitable.

***Count VI - Financial Exploitation***

**XXXVII.**

Plaintiff, Irene M. O'Neil, restates and realleges all of the preceding paragraphs as though fully set forth in this Count.

**XXXVIII.**

Irene M. O'Neil was a vulnerable adult as defined by [Minn. Stat. §626.5572, subd. 21](#), at all times relevant to the transactions alleged in this amended Complaint.

**XXXIX.**

Kevin J. O'Neil **financially exploited** Irene M. O'Neil as defined by [Minn. Stat. §626.5572, subd. 9](#).

WHEREFORE, Irene M. O'Neil demands pursuant to [Minn. Stat. §626.557, subd. 20](#):

1. Damages equal to three times the amount of her compensatory damages or \$10,000.00, whichever is greater;

2. Recover of her reasonable attorney's fees and costs, including the reasonable fees for her Guardian and Conservator, incurred in connection with this claim;
3. For such other and further relief as the Court deems just and equitable.

Dated: October 4, 2012

*ACKNOWLEDGEMENT:* The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees maybe awarded pursuant to [Minn. Stat. Sec. 549.21, Subd. 2](#), to the party against whom the allegations in this pleading are asserted.

O'BRIEN & WOLF, L.L.P.

By <<signature>>

Raymond L. Hansen, #0281785

Attorney for Plaintiff

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